

**MANDATE****UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT****Motion Information Statement**

Docket Number(s): 06-5498-cr

United States v. Elias Nazario Fernandez**Motion For:** Motion to Dismiss for Lack of Jurisdiction or Order Summarily Affirming the Conviction**Set forth below precise, complete statement of relief sought:**

Dismissal of appeal because notice of appeal was not timely or, in the alternative, summary affirmance of the conviction because there are no non-frivolous grounds for appeal.

**Moving Party:** United States of America**Opposing Parties:** Elias Nazario Fernandez☐ Plaintiff☐ Defendant☐ Appellant/Petitioner ☒ Appellee/Respondent**Moving Attorney:** \_\_\_\_\_

(Name, with firm, address, phone number and email)

MICHAEL J. GARCIA

United States Attorney, SDNY

One St. Andrew's Plaza

New York, NY 10007

by: AUSA Arlo Devlin-Brown

Tel.: (212) 637-2476

Email: Arlo.Devlin-Brown@usdoj.gov

**Opposing Attorneys:** \_\_\_\_\_

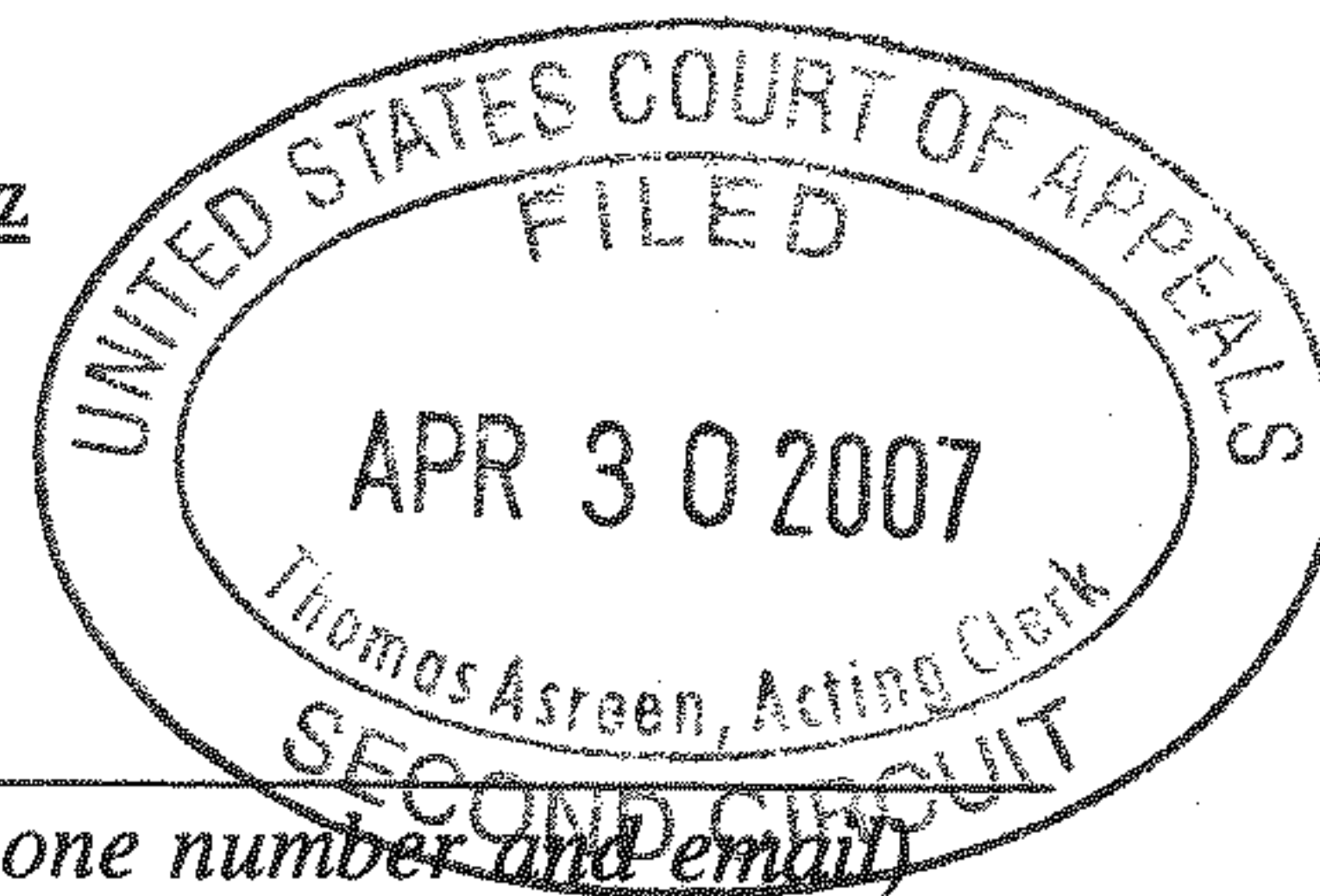
(Name, with firm, address, phone number and email)

Ellyn Bank, Esq.

30 Vesey Street, Suite 100

New York, NY 10007

Tel: (212) 571-3980

**Court-Judge/Agency appealed from:** Hon. Harold Baer, United States District Judge, Southern District of New York**Please check appropriate boxes:**

Has consent of opposing counsel:

A. been sought?

☐ Yes ☒ No

B. been obtained?

☐ Yes ☒ No

Is oral argument requested?

☐ Yes ☒ No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?\*

☐ Yes ☒ No

If yes, enter date: \_\_\_\_\_

**Signature of Moving Attorney:**

AUSA Arlo Devlin-Brown

Date: 4/30/07

Has service been effected?

☒ Yes ☐ No

[Attach affidavit of service]

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS  
AND INJUNCTIONS PENDING APPEAL**Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court?

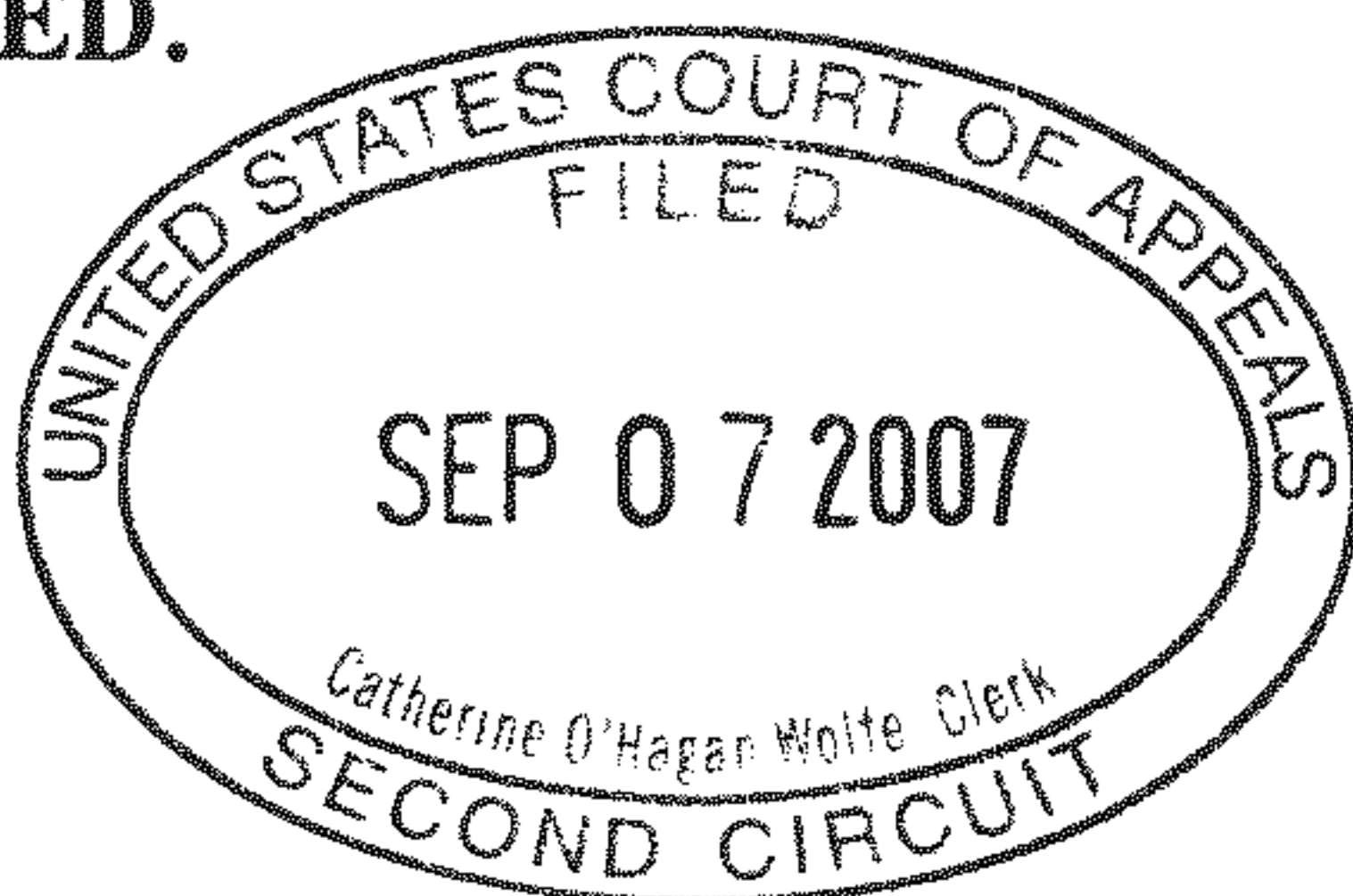
☐ Yes ☐ No

Requested return date and explanation of emergency: \_\_\_\_\_

  
Catherine O'Hagan Wolfe, Clerk


  
by \_\_\_\_\_

DEPUTY CLERK

**ORDER**Before: Hon. Robert A. Katzmann, Hon. Barrington D. Parker, Hon. Peter W. Hall,  
Circuit Judges.**IT IS HEREBY ORDERED** that the motion for summary affirmance be and it hereby is  
**GRANTED.**

September 07, 2007

Date

For the Court:

Catherine O'Hagan Wolfe, Clerk

By: Lucille Carr

ISSUED AS MANDATE:

9/28/07